

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification for the)	Docket No.
Blythe Solar Energy Project)	09-AFC-6
by Palo Verde Solar I, LLC)	
<hr/>)	

CALIFORNIA ENERGY COMMISSION
HEARING ROOM B
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

THURSDAY, JULY 15, 2010
10:00 a.m.

Reported by:
Peter Petty, CER
Contract No. 170-09-002

COMMITTEE MEMBERS

Karen Douglas, Chairman and Presiding Member

Robert B. Weisenmiller, Associate Member

HEARING OFFICER, ADVISORS

Raoul Renaud, Hearing Officer

Eileen Allen, Advisor to Commissioner Weisenmiller

Panama Bartholomy, Advisor to Commissioner Douglas

Galen Lemei, Advisor to Commissioner Douglas

STAFF, CONSULTANTS AND STAFF WITNESSES

Lisa DeCarlo, Staff Counsel

Alan Solomon, Project Manager

Alan De Salvio (via teleconference)

Roseana Navarro-Brasington (via teleconference)

Mojave Desert Air Quality Management District

Michael Donovan

Tannika Engelhard

United States Fish & Wildlife Service

Amy Golden

Sara Keeler

Mark Masser (via teleconference)

Bureau of Land Management

Magdalena Rodriguez (via teleconference)

California Department of Fish and Game

Susan Sanders, PhD

Aspen Environmental Group

John Thornton

William Walters (via teleconference)

OFFICE OF THE PUBLIC ADVISER

Jennifer Jennings, Public Adviser

APPLICANT

Scott Galati, Attorney
Robert Gladden, Attorney
Galati and Beck

Alice Harron
Elizabeth Ingram
Solar Millennium, LLC

Ari Bachrach (via teleconference)
Carl Lindner (via teleconference)
AECOM

William Graham
Jennifer Guigliano
AECOM

INTERVENORS

Elizabeth Klebaner, Attorney
Adams Broadwell Joseph & Cardozo
representing California Unions for Reliable Energy (CURE)

ALSO PRESENT

Daniel Curtin
California Conference of Carpenters

Dale Evenson (via teleconference)
Jason Neuman (via teleconference)
Riverside County Fire Department

I N D E X

	<u>Page</u>
Proceedings	1
Call to Order and Introductions	1
General Instructions from Hearing Officer Renaud	3
Statement by Intervenor CURE	4
Evidentiary Presentations	
<u>Air Quality Witness</u>	
<u>Staff</u>	
Alan De Salvio	
Direct Examination by Ms. DeCarlo	11
Summary of Topics by Mr. Galati	12
<u>Biology Witnesses</u>	
<u>Applicant</u>	
William Graham	
Direct Examination by Mr. Galati	32
Cross Examination by Ms. DeCarlo	35
Jennifer Guigliano	
Cross Examination by Ms. DeCarlo	35
Recalled by the Committee	79
<u>Staff</u>	
Susan Sanders, PhD	
Direct Examination by Ms. DeCarlo	39, 41
Cross Examination by Mr. Galati	50
Recalled by the Committee	77
Mark Masser	
Direct Examination by Ms. DeCarlo	40
Cross Examination by Mr. Galati	51
Magdalena Rodriguez	
Direct Examination by Ms. DeCarlo	40, 46
Cross Examination by Mr. Galati	48

I N D E X

	<u>Page</u>
<u>Biology (continued)</u>	
Comments by Ms. Engelhard	53
<u>Soil and Water Witnesses</u>	
<u>Staff</u>	
Michael Donovan	
Direct Examination by Ms. DeCarlo	58,60
Cross Examination by Mr. Galati	61
John Thornton	
Direct Examination by Ms. DeCarlo	58
Public Comment	
Daniel Curtin	64
Adjournment	85
Reporter's Certificate	86

EXHIBITSFor the Applicant

<u>Number</u>	<u>Description</u>	<u>Identified</u>	<u>Received</u>
1-51	Multiple Exhibits	8	9

For the Staff

<u>Number</u>	<u>Description</u>	<u>Identified</u>	<u>Received</u>
200-208	Multiple Exhibits	9	9
209	Final Determination of Compliance	10	10
210	Blythe Solar Power Project Soil and Water Resources Conditions of Certification	57	--

1 MS. HARRON: I'm Alice Harron, senior director of
2 development. Along with me is Elizabeth Ingram, project
3 manager for Blythe. We have a lot of staff in the audience
4 as well.

5 HEARING OFFICER RENAUD: Thank you. And
6 intervenor CURE?

7 MS. KLEBANER: Good morning, Elizabeth Klebaner
8 representing California Unions for Reliable Energy.

9 HEARING OFFICER RENAUD: Thank you.

10 And I know we have a telephone hookup, I have
11 heard some people calling in. Is there anyone on the
12 telephone who would like to introduce themselves? Just
13 speak up.

14 (Several people spoke at once.)

15 MR. De SALVIO: Alan De Salvio and Roseana
16 Navarro-Brasington from Mojave Desert AQMD.

17 HEARING OFFICER RENAUD: Very good, welcome, sir.
18 Anyone else?

19 MR. EVENSON: Dale Evenson, Riverside County Fire
20 Department.

21 HEARING OFFICER RENAUD: Very good.

22 MR. NEUMAN: Jason Neuman, Riverside County Fire
23 Department.

24 HEARING OFFICER RENAUD: Anyone else.

25 MR. BACHRACH: Ari Bachrach and Carl Lindner,

1 we're with AECOM; we're consultants to the applicant.

2 HEARING OFFICER RENAUD: Very good, welcome.

3 Anyone else?

4 MS. ENGELHARD: Tannika Engelhard, US Fish and
5 Wildlife Service.

6 HEARING OFFICER RENAUD: Very good. Anyone else?

7 MR. WALTERS: William Walters, consultant with the
8 Energy Commission for air quality.

9 HEARING OFFICER RENAUD: Welcome. Anyone else?

10 All right, good. We have now been joined by Galen
11 Lemei who is the advisor to Chairman Douglas.

12 I'm not sure I said at the beginning what this is.

13 This is the evidentiary hearing for the Blythe Solar Power
14 Project, docket number 09-AFC-6. The evidentiary hearing is
15 the time when the Committee hears the evidence presented by
16 the parties and it is admitted officially into the record.
17 And the record will form the basis of the Presiding Member's
18 Proposed Decision, which would then go to the full
19 Commission. Only the evidence which is admitted into the
20 record today may be considered in the preparation of that
21 decision so this is a very important proceeding for the
22 case.

23 We are being recorded today. We have a licensed
24 stenographic recorder present in the room. At the end of
25 the proceedings that recording will be transcribed into a

1 written or typed booklet which will be posted on the
2 Commission website and will be available for anyone and
3 everyone to read.

4 Testimony today will be under oath. To the extent
5 that parties wish to cross-examine witnesses who are present
6 they will be able to do so as well.

7 The microphones we have in the room are new and
8 quite sensitive. I think everyone can probably hear very
9 well and I think the people on the phone can hear very well.

10 You do need to press the speak button on your microphone in
11 order to be heard; and if you want to silence that just
12 press speak again.

13 We also have present in the room our Public
14 Adviser. Would you care to stand up and introduce yourself,
15 please.

16 MS. JENNINGS: Jennifer Jennings, Public Adviser.

17 HEARING OFFICER RENAUD: Welcome and thank you.

18 All right. I think before we begin the
19 evidentiary presentations I understand CURE has a statement
20 to make.

21 MS. KLEBANER: Thank you, Hearing Officer Renaud.

22 Commissioner Douglas, Commissioner Weisenmiller.
23 California Unions for Reliable Energy is pleased to announce
24 that we have reached an agreement with Palo Verde Solar I,
25 LLC, regarding all claims raised by CURE in this proceeding.

1 Pursuant to the terms of this agreement the
2 applicant has committed to minimize and avoid impacts to
3 desert washes and special status plants and wildlife during
4 project operation and construction.

5 The project applicant has already, has also
6 committed to provide funding to mitigate for impacts to
7 seasonal forage as well as dispersal habitat for the Nelson
8 Bighorn Sheep.

9 The applicant has also provided to CURE, pursuant
10 to the terms of a non-disclosure agreement, the location and
11 certain characteristics of lands planned for purchase as
12 compensation lands.

13 And finally, the applicant has committed to remove
14 unexploded ordnance and munitions and explosives of concern,
15 as required, from the project site in order to protect
16 worker safety. These acts will be undertaken prior to
17 commencement of construction with regard to UXO removal.

18 The terms of our agreement are summarized in the
19 joint statement that I will pass out to all the parties, the
20 Commissioners and the Hearing Officer today and CURE and the
21 applicant will docket the joint statement on the project
22 website later this afternoon.

23 With this agreement together with the conditions
24 of certification that have been worked out by the applicant
25 and staff in the preceding days our concerns have been

1 addressed and as such we will not be submitting additional
2 evidence into the record and we waive cross for staff's and
3 the applicant's witnesses.

4 HEARING OFFICER RENAUD: All right, thank you.

5 MS. KLEBANER: Thank you.

6 HEARING OFFICER RENAUD: Thank you very much for
7 that statement. We appreciate that and we appreciate the
8 efforts the parties have made towards resolution of issues.

9 With that I think we should begin our evidentiary
10 presentations. Ms. DeCarlo, Mr. Galati, which of you wants
11 to go first? We are here to listen attentively. I'll let
12 you take over.

13 MR. GALATI: I guess I would start first by
14 telling you that I hope to minimize the amount of time that
15 the Committee is needed here today and tomorrow. I think
16 that we have resolved many if not all of our issues.

17 Because we are still working on some final
18 language in Biology, Soil and Water, Cultural Resources, we
19 wanted to ask the Committee for, at some time, an
20 opportunity for direction for a further workshop to finalize
21 those. We have several of them in progress here and we hope
22 to be able to come back after a workshop and be able to
23 clarify exactly, do some joint exhibits and stipulations in
24 some of these areas. But I think we are very close.

25 I think that Ms. DeCarlo had put together topics

1 in an order for where we want to go through. And if the
2 Committee would indulge us if there is no objection, rather
3 than swear in every witness for these areas where we are
4 proceeding on declaration. In addition we have some
5 modifications to our testimony if the Committee would accept
6 an offer of proof from myself with no objection as opposed
7 to swearing in a witness for some modifications to the
8 testimony I think that would speed things along fairly well.

9 HEARING OFFICER RENAUD: Does that sound
10 acceptable to the staff, Ms. DeCarlo?

11 MS. DeCARLO: Yes it does.

12 HEARING OFFICER RENAUD: All right, that will be
13 fine.

14 MR. GALATI: I don't know what the Committee's
15 preference is. We would probably -- I don't know if you
16 want us to introduce exhibits all at the end of the
17 proceedings or introduce as many exhibits as we can now.
18 Whatever helps the Hearing Officer write the decision.

19 Some of the exhibits -- I can't introduce my
20 entire exhibit list right now because I have exhibits that I
21 know for a fact will change if we have conversations.

22 HEARING OFFICER RENAUD: Well, I'm in favor of
23 spending the least amount of clerical time on exhibits. And
24 if the parties so stipulate the Committee would agree to a
25 bulk, en masse, admission of exhibits if there are no

1 objections from any party.

2 MS. DeCARLO: No. We would just need to specify
3 those exhibits that are withheld pending resolution of the
4 other issues.

5 HEARING OFFICER RENAUD: Fine, that sounds good.

6 MR. GALATI: Okay, I'll go ahead and start with
7 that. I delivered to the Committee today and staff a
8 revised exhibit list that added Exhibits 60 through 70.

9 HEARING OFFICER RENAUD: Do you have any more
10 copies of that? I have one. I think the Committee Members
11 would like one. If not we can share.

12 Okay, so we'll follow along on your new, still
13 warm exhibit list.

14 I should add for the record, Panama Bartholomy has
15 joined us as well. He is also Chairman Douglas' advisor.

16 MR. GALATI: I think that what I would ask is that
17 all the way from Exhibit 1 -- I would ask that Exhibits 1
18 through 51 be entered into the record. For the Committee's
19 clarification, Exhibit 52 and Exhibit 53 include some of our
20 opening and rebuttal testimony that I will need to point to
21 you where there are some changes. So I thought that we
22 would go from 1 to 51 at this stage.

23 HEARING OFFICER RENAUD: Yes.

24 MR. GALATI: And then we could pick it up with the
25 rest of the exhibits as they change after that, if that

1 would be okay. So my offer is to move Exhibits 1 through 51
2 into the record.

3 HEARING OFFICER RENAUD: Is there any objection
4 from the staff?

5 MS. DeCARLO: No objection.

6 HEARING OFFICER RENAUD: All right, those will be
7 admitted then, thank you.

8 (Applicant's Exhibits 1-51 were admitted
9 into the record.)

10 MR. GALATI: That's the end of, I guess, our
11 preliminary moving of exhibits.

12 And I guess just for the record, we would not
13 object to staff's moving exhibits 200 through 208 into the
14 record.

15 HEARING OFFICER RENAUD: Yes, thank you. And we
16 do have a new, updated staff exhibit list, which contains
17 Exhibits 200 through 208. Is there a motion from staff?

18 MS. DeCARLO: Yes, staff would like to move those
19 exhibits into the record at this moment.

20 HEARING OFFICER RENAUD: Is there any objection?

21 MR. GALATI: No objection.

22 HEARING OFFICER RENAUD: Those are admitted, thank
23 you.

24 (Staff's Exhibits 200 through 208 were admitted
25 into the record.)

1 MS. DeCARLO: I'm not sure if Mr. Galati included
2 the Final Determination of Compliance in his exhibit list.
3 If not we can add it to ours as Exhibit 209. And the Air
4 District is on the phone to sponsor that.

5 HEARING OFFICER RENAUD: All right.

6 MR. GALATI: It is not on our exhibit list.

7 HEARING OFFICER RENAUD: It is typically a staff
8 exhibit so we'll make that 209. I take it there's no
9 objection?

10 MR. GALATI: No objection.

11 HEARING OFFICER RENAUD: All right, that's
12 admitted.

13 (Staff's Exhibit 209 was admitted into
14 the record.)

15 HEARING OFFICER RENAUD: And in order to let the
16 Air District witness go would you like to take care of his
17 sponsoring that right now?

18 MS. DeCARLO: Yes.

19 HEARING OFFICER RENAUD: All right. I understand
20 he is on the phone so let's go ahead.

21 MS. DeCARLO: Yes. I'm sorry, I didn't catch your
22 name, from the Mojave Desert Air Quality Management
23 District?

24 MR. De SALVIO: Alan De Salvio and Roseana
25 Navarro-Brasington.

1 DIRECT EXAMINATION

2 BY MS. DeCARLO:

3 Q Thank you for joining us today. Did you
4 participate in the crafting of the Final Determination of
5 Compliance?

6 A I did.

7 Q And are you sponsoring it today to enter into
8 evidence at the Energy Commission's hearing on the Blythe
9 Solar Power Project?

10 A I am.

11 MS. DeCARLO: He doesn't need to be sworn in, does
12 he?13 HEARING OFFICER RENAUD: Well, I was thinking we
14 probably should just for --

15 MS. DeCARLO: Okay.

16 HEARING OFFICER RENAUD: Just for safety.

17 MS. DeCARLO: Okay.

18 HEARING OFFICER RENAUD: But we'll do that at the
19 end and bring in the testimony as if he had been sworn
20 before.

21 MS. DeCARLO: Okay.

22 HEARING OFFICER RENAUD: All right.

23 MS. DeCARLO: Can he leave now or does he need to
24 remain?

25 HEARING OFFICER RENAUD: Is that testimony

1 complete or is that -- Yes.

2 MR. GALATI: No cross-examination.

3 HEARING OFFICER RENAUD: No cross, all right.

4 Sir, I am going to swear you in. Or if you want
5 to do that. All right. The court reporter is going to
6 swear you in.

7 Whereupon,

8 ALAN De SALVIO

9 Was duly sworn.

10 THE REPORTER: Very good, thank you. Could you
11 also just state and spell your name for the record.

12 MR. De SALVIO: Alan De Salvio, A-L-A-N. The last
13 name is D-E, space, capital S-A-L-V-I-O.

14 THE REPORTER: Thank you, sir.

15 HEARING OFFICER RENAUD: Thank you. And you can
16 now lower your hand. (Laughter)

17 And we have a stipulation, I believe, from the
18 parties that Mr. De Salvio's testimony will be deemed sworn
19 from the outset. Thank you. Good.

20 MS. DeCARLO: Okay.

21 HEARING OFFICER RENAUD: That's that.

22 MR. GALATI: Maybe if I could just give a quick
23 summary of where we are on the topics of why we want to have
24 further discussions.

25 I guess I'll start with Soil and Water. Soil and

1 Water, we and staff have agreed to a revision to the
2 modeling condition, which for all intents and purposes takes
3 our disagreement and sort of sets it aside. And our
4 particular disagreement is specifically related to how
5 project pumping could affect the Colorado River. And so we
6 have reached an accord where offsets and mitigations will be
7 calculated in a way that's acceptable to staff and to us.
8 And we will proceed in that way and not wade into the very
9 extremely complex waters of the Colorado River Supreme Court
10 regulation.

11 I think we are very comfortable with the language.
12 Unfortunately we have a redline/strikeout version of that
13 language that we worked on yesterday that we would like to
14 clean up for you and so we would like that to be -- soil and
15 water to be part of the workshop we are going to ask you to
16 order us to do.

17 There are a couple of minor change to Soil and
18 Water conditions of certification that we have agreed to as
19 well and there is an outstanding discussion we need to have
20 about the need for a particular Soil and Water Condition 17
21 that we haven't finished our discussions. So at a maximum
22 we think that if we came back to you on Soil and Water, we
23 estimate no more than ten minutes of direct examination if
24 there is still a dispute on Soil and Water 17. Otherwise we
25 would anticipate asking you to accept the evidence in the

1 record on the declaration.

2 HEARING OFFICER RENAUD: All right, thank you.
3 Anything to add, Ms. DeCarlo?

4 MS. DeCARLO: No. And staff expects the same
5 amount of time for direct on our part.

6 HEARING OFFICER RENAUD: We'll put that one aside
7 then for later.

8 MR. GALATI: We will be asking you to modify the
9 Worker Safety 7 condition. This is a condition that deals
10 with the provision of funds for the fire department. We had
11 a workshop on July 9th, on Friday, into the -- not the wee
12 hours of the night but pretty late. Staff and the applicant
13 agreed to modify this condition in a way that's acceptable
14 to both parties.

15 I could actually mark this -- you know, I'll wait
16 since this is after our testimony. This is one of the areas
17 in which we would be modifying our testimony to now say we
18 withdraw our previous request to modify Worker Safety 7 and
19 agree to this version of Worker Safety 7. So we will be
20 marking that as an exhibit later.

21 HEARING OFFICER RENAUD: All right.

22 MR. GALATI: About a five minute cleanup, I think.

23 HEARING OFFICER RENAUD: So you will be presenting
24 the testimony at some point today?

25 MR. GALATI: Unless staff objected I didn't see

1 the need to bring a Worker Safety witness. I would be
2 asking them to accept an offer of proof that we would modify
3 our testimony in accordance with this condition.

4 HEARING OFFICER RENAUD: Well, we'll proceed as
5 you've suggested and when we hear the offer of proof we'll
6 see if staff accepts it and we'll go.

7 MR. GALATI: The next area is in the area of
8 Cultural Resources conditions. You know, we acknowledge
9 that the staff originally started down a path with full
10 coordination with BLM, down a programmatic agreement
11 approach. And that in March, which we lovingly call "the
12 divorce" between BLM and the CEC, that the staff sort of
13 picked up the ball and needed to relook at how they were
14 going to approach Cultural Resources.

15 So it took some while, it took awhile to get a set
16 of cultural conditions for us to be able to have
17 conversations. We have already had two workshops now in the
18 last few days. In fact, maybe one in the last few hours on
19 Cultural Resources. And we are continuing to make progress
20 on agreeing on the language in those conditions. I am
21 optimistic that we will do so, so we would like to have
22 Cultural Resources part of your order to workshop so that we
23 could come back and minimize the discussion on Cultural
24 Resources as well.

25 HEARING OFFICER RENAUD: All right. So I take it

1 Exhibit 62 may eventually change from what it is now, which
2 that's your revisions, I believe, to the COCs.

3 MR. GALATI: That's correct.

4 HEARING OFFICER RENAUD: All right. Does that
5 sound acceptable to staff?

6 MS. DeCARLO: Yes.

7 HEARING OFFICER RENAUD: All right, that's how we
8 will proceed then.

9 MR. GALATI: Lastly.

10 HEARING OFFICER RENAUD: Let me ask this. Would
11 you anticipate calling any witnesses on Cultural or you
12 don't know yet?

13 MR. GALATI: I'm sorry?

14 HEARING OFFICER RENAUD: Would you anticipate
15 calling witnesses on Cultural?

16 MR. GALATI: I have a witness here so I could ask,
17 I could call a witness, they could sponsor the new exhibit
18 and if the Committee had any questions. But I do -- if
19 everything works out I don't anticipate needing to cross-
20 examine the staff.

21 HEARING OFFICER RENAUD: All right, thank you.

22 MS. DeCARLO: And that's the same for staff. We
23 have a witness who would agree to the agreed-upon conditions
24 on the record and would be available for any questions.

25 HEARING OFFICER RENAUD: Good, thank you.

1 MR. GALATI: The last area is an area that I think
2 we have spent considerable amount of time on with staff and
3 the agencies and that's Biology. We worked late last night
4 and are still exchanging some drafts. Quite frankly, the
5 ball is in our court to produce the last draft. We've given
6 that to staff now so we'll need to get together and talk
7 about -- Let me tell you the areas that possibly remain for
8 disputes. I'm going to again remain optimistic.

9 HEARING OFFICER RENAUD: The draft you mean is of
10 the COCs or the sections?

11 MR. GALATI: Draft COCs.

12 HEARING OFFICER RENAUD: All right.

13 MR. GALATI: We are now working with about four
14 documents so that we could -- we have a document which we
15 are calling Settled Conditions and Revisions to Conditions
16 from the Revised Staff Assessment. We have agreed to
17 certain conditions without any revision in the revised staff
18 assessment and there's about three or four that we're still
19 talking about.

20 (Music was broadcast over the
21 teleconference line.)

22 MR. GALATI: So we would like to continue to have
23 those conversations.

24 The areas that we may be presenting testimony to
25 you today deal with the impacts to the Bighorn Sheep,

1 possibly --

2 UNIDENTIFIED SPEAKER: Hi, I'm calling you back
3 regarding an account.

4 HEARING OFFICER RENAUD: Hello. I think you may
5 have the wrong number.

6 UNIDENTIFIED SPEAKER: 1-4-5-9-6-2-1-9.

7 HEARING OFFICER RENAUD: Whoever is speaking on
8 the phone line here, we are in a hearing. I think you must
9 have the wrong number.

10 Those of you who are listening in on the phones,
11 if you want to carry on business and not have us hear you,
12 and we would appreciate not hearing you, mute your phone.
13 But do not place us on hold because sometimes hold has music
14 and we would hear that and that would not help the
15 proceedings here. Thank you. Okay, go ahead, sorry for the
16 interruption.

17 MR. GALATI: Another possible area that we may be
18 asking you to decide is whether the staff needs a condition
19 on the US Fish and Wildlife Service raven management plan.

20 Another area is a criteria for mitigation lands
21 for desert tortoise. A very limited five minutes of
22 testimony, I think, discussion.

23 And other than that I think that we have really
24 worked hard and the staff certainly has worked hard and I
25 think that we have resolved a lot of issues in this project.

1 HEARING OFFICER RENAUD: Yes.

2 MR. GALATI: One thing I'd like to say on the
3 record is the applicant had no -- at considerable expense
4 has agreed to mitigation for the desert tortoise at a one-
5 to-one ratio to avoid continued discussions on habitat
6 quality. I think that has allowed a lot of conversations to
7 proceed so I would like to acknowledge that. That somewhere
8 with Alice Harron and she was able to convince others in the
9 company that that was, that was something that they could
10 do. But that was -- it's a considerable expense.

11 I don't think that we have anything other than
12 that and minor condition languages, language to conditions
13 to discuss at the workshop. So I'm hoping that you would
14 order that as well.

15 Lastly -- actually, the staff wants to comment on
16 Biology.

17 MS. DeCARLO: No, I agree with your summarization
18 of the outstanding issues. We will probably be testimony
19 along those lines today.

20 HEARING OFFICER RENAUD: Thank you.

21 MR. GALATI: Lastly we have Traffic and
22 Transportation. And I think we are down to discussing one
23 condition on the need to have engineering controls related
24 to glint and glare and possibly flash for pilots. So we had
25 very productive discussions yesterday and we would like to

1 continue those as well today. If we do need to present live
2 testimony in Traffic and Transportation, due to the
3 unavailability of one of our witnesses we would ask for that
4 to proceed tomorrow.

5 HEARING OFFICER RENAUD: All right, that sounds
6 fine to us; we have reserved both days. And so we can be
7 here tomorrow for whenever you need us.

8 And would that be a workshop topic as well?

9 MR. GALATI: Yes, that would be a workshop topic.

10 HEARING OFFICER RENAUD: Okay.

11 MR. GALATI: We also in the spirit of cooperation
12 had two areas, Visual Cumulative Impacts and Land Use
13 Cumulative Impacts, that we will be withdrawing that
14 testimony. We would not be having a dispute on those areas.

15 I have an outstanding cleanup item that I need to
16 ask to be discussed at the workshop too is there's a couple
17 of conditions in Visual that I would like to talk to staff
18 about.

19 HEARING OFFICER RENAUD: All right, we'll add that
20 to the list of possible items to be subject to Committee
21 Order.

22 MR. GALATI: I think those are the areas that are,
23 that are left open.

24 MS. DeCARLO: There's one outstanding item
25 regarding Transmission System Engineering. Staff still has

1 not be able to obtain access to the Phase 2. We understand
2 it has been delivered to the applicant, however, they are
3 under a non-disclosure agreement and can't release it to
4 staff. We are in the process of working with the Governor's
5 Office and SCE and CAISO to try to obtain access to that
6 document. It may be several weeks, however, before we are
7 able to do so.

8 I am recommending that the record be left open for
9 Transmission System Engineering to receive our analysis when
10 it is completed, by declaration. At which point the parties
11 can request, if they wish to, to have a hearing on the
12 issue. Otherwise it would simply be entered into the record
13 by declaration.

14 HEARING OFFICER RENAUD: I think we'll be able to
15 manage that one way or another.

16 MR. GALATI: I'll wait to address you if for some
17 reason that doesn't occur and we are not able to get staff's
18 analysis in time to support the PMPD. Then at that time
19 we'd be proposing to you a way to go forward.

20 HEARING OFFICER RENAUD: All right, thank you.

21 Anything else from either party on these bringing-
22 us-up-to-speed matters, which we really appreciate knowing
23 where you are?

24 MR. GALATI: None from the applicant.

25 MS. DeCARLO: None from staff.

1 HEARING OFFICER RENAUD: All right, good.

2 Would you like to proceed then with the submission
3 of topics by declaration at this time or what's your
4 pleasure?

5 MR. GALATI: I actually moved all of my testimony
6 in up until my testimony package.

7 HEARING OFFICER RENAUD: That's right.

8 MR. GALATI: I thought it might be cleaner for the
9 record, since my testimony is combined into one exhibit,
10 that once we had our workshop I could then tell you what
11 parts of that are modified.

12 HEARING OFFICER RENAUD: All right. And staff,
13 you have already moved yours as well?

14 MS. DeCARLO: Yes we have.

15 HEARING OFFICER RENAUD: I think for the record
16 then perhaps I ought to read into the record the topics that
17 were submitted by declaration. And I am going to rely on
18 Ms. DeCarlo's list, correct me if I'm wrong about anything.

19 Project Description, applicant's testimony.

20 Alternatives, Facility Design, Geology,
21 Paleontology and Minerals, Hazardous Materials Management,
22 Noise and Vibration, Power Plant Efficiency, Power Plant
23 Reliability, Public Health, Socioeconomics, Transmission
24 Line Safety and Nuisance, Waste Management and Air Quality.

25 Correct, applicant?

1 MR. GALATI: That's correct. I believe that
2 Worker Safety Fire Protection will be once we identify this
3 as an exhibit. I think we can actually do it now if you
4 want.

5 MS. DeCARLO: Actually, we have apparently just
6 identified a typographical error in the amount that we
7 indicated, so if I can read that to you now to see if we
8 need to talk about this further. We have under number 2 of
9 the condition, it's currently \$825,000, that's supposed to
10 be \$850,000. That coincides with the verification below.

11 MR. GALATI: I think what I'll do is let me
12 correct that and get a clean copy for the Committee.

13 MS. DeCARLO: Okay, okay.

14 HEARING OFFICER RENAUD: And subject to that
15 correction then Worker Safety and Fire Protection is also
16 submitted by declaration from both parties.

17 MR. GALATI: Yes.

18 HEARING OFFICER RENAUD: All right, good.

19 MS. DeCARLO: Yes.

20 HEARING OFFICER RENAUD: Thank you.

21 MS. DeCARLO: I have one clarification on Air
22 Quality. Mr. Galati, did you indicate that you have
23 withdrawn your request?

24 MR. GALATI: Yes. In our testimony we have a
25 request for some changes to staff's conditions that we no

1 longer are requesting.

2 HEARING OFFICER RENAUD: All right, good. One
3 thing I will say is that it would assist the Committee
4 greatly if at some point we could get a final, clean version
5 of all the conditions so they can be incorporated into the
6 proposed decision.

7 MR. GALATI: Yes, we can do that.

8 HEARING OFFICER RENAUD: All right, thank you.

9 Let's see. I take it then that you would want to
10 be ordered to go workshop some of the other topics.

11 MS. DeCARLO: One additional item. You skipped
12 Land Use. I was wondering if we could enter staff's Land
13 Use testimony by declaration?

14 HEARING OFFICER RENAUD: That's right, I did skip
15 that because applicant's testimony was withdrawn. And so
16 it's entered by stipulation on the declarations of staff
17 only.

18 MR. GALATI: That's correct.

19 HEARING OFFICER RENAUD: Very good.

20 MS. DeCARLO: And we'll reserve Visual Resources
21 for after the workshop. I think that was the one remaining
22 item.

23 MR. GALATI: Yes, thank you.

24 HEARING OFFICER RENAUD: Right. Okay, good.

25 So you still have issues to talk about in Visual

1 Resources, Soil and Water, Biological Resources, Cultural
2 Resources and Traffic and Transportation. But you're making
3 progress and there's strong potential to come to resolution,
4 or closer to resolution at any rate, through some
5 continuation of your workshops. Am I correct about that?

6 MR. GALATI: That's correct.

7 HEARING OFFICER RENAUD: All right. And you're
8 prepared to proceed in that fashion today?

9 MR. GALATI: Yes we are. I think the only
10 remaining -- I know we have public comment today at 5:30.

11 HEARING OFFICER RENAUD: Yes, yes.

12 MR. GALATI: And so I think what we need to do is
13 to determine what time we should reconvene for purposes of
14 hearing that evidence.

15 HEARING OFFICER RENAUD: Well, perhaps we should
16 remain flexible and you tell us when you're ready. The
17 Committee and I have this entire day reserved for this
18 project. I think what we can do is go back to our offices.
19 you know how to reach me. Call me or email me and let me
20 know and I'll get the Committee assembled and we'll come
21 back at that time.

22 MR. GALATI: That works for us. We'll be in the
23 building.

24 MS. DeCARLO: Yes.

25 HEARING OFFICER RENAUD: I am just thinking about

1 the people in the audience and those on the phone. How to
2 know when to come back.

3 Could you estimate a time for me when you might
4 know for sure when you would be ready?

5 MR. GALATI: Three o'clock.

6 HEARING OFFICER RENAUD: Well, all right. If you
7 want to just come back at 3:00. If you're ready sooner then
8 you can have lunch. (Laughter).

9 I think in fairness we do have to give a time
10 certain so that those on the phone and those in the audience
11 will know when to come back and not possibly miss anything.

12 MS. DeCARLO: Although our Aviation expert won't
13 be available until 2:00, so does an hour give us enough time
14 to discuss that issue. We may want a little bit more.

15 MR. GALATI: How about if we come back at 3:00.
16 you can always saw we can reconvene in another 45 minutes if
17 we're close.

18 MS. DeCARLO: Okay.

19 HEARING OFFICER RENAUD: Sounds good to me, all
20 right. So that will be the Committee Order. The workshop
21 will continue on those topics. Those on the phone, members
22 of the public, those in the audience. We will adjourn until
23 3:00 o'clock, at which time we will be back here. We will
24 reopen the phone line at that time. Those of you who phoned
25 in, use the same procedure that you used this morning.

1 Anything from the Committee?

2 ASSOCIATE MEMBER WEISENMILLER: I just want to
3 thank the parties for working hard at this and working
4 through the issues. I know reaching settlements require a
5 give and take and all sides and certainly appreciate the
6 effort to get a satisfactory resolution to all the parties.

7 Thanks again.

8 HEARING OFFICER RENAUD: All right, thank you.
9 We're adjourned until 3:00 o'clock.

10 (Whereupon, the Evidentiary Hearing was
11 adjourned at 10:47 a.m. to conduct a
12 workshop to discuss outstanding issues.)

13 --oOo--

14

15

16

17

18

19

20

21

22

23

24

25

1 AFTERNOON SESSION

2 HEARING OFFICER RENAUD: All right, it's 3:00
3 o'clock, we are back on the record. It's 3:10, we are back
4 on the record in the Evidentiary Hearing for the Blythe
5 Solar Power Project.

6 We previously did introductions and I think we
7 will dispense with that at this time. People on the phone,
8 just say something so we know it's working.

9 UNIDENTIFIED SPEAKER: Hello.

10 HEARING OFFICER RENAUD: Hello. Okay, good.

11 UNIDENTIFIED SPEAKER: Hello.

12 HEARING OFFICER RENAUD: Anyone on the phone care
13 to introduce themselves so we'll know who is listening? You
14 don't have to.

15 MR. BACHRACH: This is Ari Bachrach from AECOM,
16 consultants to Solar Millennium.

17 HEARING OFFICER RENAUD: Thank you. Anyone else?

18 MR. NEUMAN: Jason Neuman, Riverside County Fire.

19 HEARING OFFICER RENAUD: Good. Anyone else?

20 MR. MASSER: Mark Masser, BLM.

21 HEARING OFFICER RENAUD: Very good, thank you.

22 MS. RODRIGUEZ: Magdalena Rodriguez, Fish and
23 Game.

24 HEARING OFFICER RENAUD: Thank you very much.

25 MS. ENGELHARD: Tannika Engelhard, Fish and

1 Wildlife.

2 HEARING OFFICER RENAUD: All right, thank you.

3 I'll tell you what, in the interest of an accurate record I
4 am going to go back and ask you, even though it will take a
5 minute or two, to spell your names for the benefit of the
6 record so that we can have an accurate record.

7 THE REPORTER: I got all the names.

8 HEARING OFFICER RENAUD: Never mind. I'm being
9 told that we got the spellings during the break so never
10 mind. All right.

11 So staff and applicant, you have been workshopping
12 and who would care to bring us up to speed here?

13 MR. GALATI: I'll go ahead if you don't mind.

14 I'm pleased to report that we have agreement on
15 the conditions of certification of Soil and Water so do not
16 need to present live testimony.

17 What our plan is we were so productive on the
18 topic areas we unfortunately did not get to Traffic and
19 Transportation. So what we would like to do is have
20 evidentiary hearing and put on live testimony for you in the
21 area of -- very limited. The only area that we have a
22 dispute in Biology has to do with one condition on the
23 Bighorn Sheep.

24 So our plan was that we would go to evidentiary
25 hearing and take evidence on that limited issue. Ask you to

1 reconvene at public comment and allow us to continue to
2 workshop the airport issue.

3 We also, I'm told, have agreement on Cultural
4 Resources and the document is being prepared that we hope to
5 use as a stipulation. I think a special thanks to the
6 cultural people, they have been working on that since ten
7 o'clock today.

8 I think we also resolved visual. We'll be
9 modifying our testimony to withdraw our objections on Visual
10 to the conditions of certification.

11 And I think that's pretty much it.

12 MS. DeCARLO: And then just the agreement on the
13 Hazardous Materials -- Worker Safety 7, I'm sorry.

14 MR. GALATI: And we did and I made that change.
15 So what we thought we would do is give you a very short
16 commercial on Biology, Bighorn Sheep. Let you go do some
17 additional work until public comment while we work on
18 airport. After public comment we would then have the
19 documents cleaned enough to actually enter into the record.

20 And if we're successful we could close out airport --
21 Traffic and Transportation and airport. If not our experts
22 are coming tomorrow to resolve that. But I think we're
23 making quite a bit of progress. I think it's just a matter
24 of producing the documents now.

25 HEARING OFFICER RENAUD: Good, thank you.

1 Ms. DeCarlo, anything to add to that?

2 MS. DeCARLO: No, nothing to add.

3 HEARING OFFICER RENAUD: All right, good.

4 So one thing that occurs to me is we might -- to
5 the extent any of the testimony that has been admitted has
6 changed we will need to have revised declarations. I'm not
7 sure that is going to be necessary but if it has changed
8 we'll need it.

9 MR. GALATI: Correct. I don't think anything has
10 changed from what we've admitted so far. The Revised Staff
11 Assessment will but I think we have enough witnesses here to
12 sponsor the exhibits we planned to show you what's changed.

13 HEARING OFFICER RENAUD: All right, good.

14 So you would like to proceed with Biological
15 Resources then?

16 MR. GALATI: You bet. I'd like to call the
17 applicant's biological panel. So that would be Bill Graham
18 and I don't know if -- Jen, would you like to be sworn to
19 assist at all?

20 Whereupon,

21 BILL GRAHAM

22 JENNIFER GUIGLIANO

23 Were duly sworn.

24 THE REPORTER: Can you please state and spell your
25 names for the record.

1 MR. GRAHAM: My name is William Graham, W-I-L-L-I-
2 A-M, G-R-A-H-A-M.

3 THE REPORTER: Thank you.

4 MS. GUIGLIANO: Jennifer Guigliano, G-U-I-G-L-I-A-
5 N-O.

6 THE REPORTER: Thank you.

7 MR. GALATI: I'm going to direct these questions
8 to Mr. Graham.

9 DIRECT EXAMINATION

10 BY MR. GALATI:

11 Q Mr. Graham, for the preparation for the
12 evidentiary hearing did you prepare testimony as part of a
13 panel for Biological Resources. It's entitled Exhibit 52.

14 A Yes I did.

15 Q And do you have any -- well, did you also prepare
16 rebuttal testimony as part of the panel? And that's
17 identified as Exhibit 53.

18 A Yes.

19 Q And in your rebuttal testimony did you provide
20 testimony regarding -- in response to CURE's witness,
21 Dr. Bleich's Bighorn Sheep testimony? Did you provide
22 responses to that?

23 A Yes I did in conjunction with my staff.

24 Q And did staff require mitigation for Bighorn
25 Sheep?

1 A Did staff require mitigation for Bighorn Sheep?
2 Are you speaking about did our own staff require mitigation
3 for Bighorn Sheep?

4 Q I apologize. Did California Energy Commission
5 staff in the Revised Staff Assessment propose mitigation for
6 Bighorn Sheep?

7 A Yes.

8 Q And did they identify impacts to Bighorn Sheep?

9 A No, they did not.

10 Q And could you explain that to us.

11 A Well, they identified impacts to potential
12 foraging habitat and impacts to potential efforts to
13 reintroduce sheep to the McCoy Mountains adjacent to the
14 site.

15 Q Do you believe the McCoy Mountains are currently
16 occupied by Bighorn Sheep?

17 A I believe there is no evidence that they are
18 currently occupied. They are mapped by the relevant
19 biological management document as unoccupied. We had many
20 hundreds of hours of biological field time out on the site
21 during a springtime after ample rainfall, saw no evidence of
22 Bighorn Sheep foraging on-site.

23 There was also an eagle survey conducted this
24 year. And admittedly it was not a protocol Bighorn Sheep
25 survey. However, I would like to note that the mountain

1 ranges that are mapped as unoccupied by the NECO plan were
2 in fact unoccupied as far as the helicopter survey went.
3 And those mountains which are mapped as occupied did, in
4 fact, have adult sheep and lambs that were noted in those
5 helicopter surveys.

6 Q Do you have an estimate about how far away the
7 project is from those mapped areas of occupation?

8 A It looks -- based on the scale here it's a
9 relatively crude scale. But it looks like the closest -- on
10 the NECO plan it looks like the closest occupied mountain
11 range would be about 15 miles away as the crow flies.

12 HEARING OFFICER RENAUD: Excuse me, Mr. Graham.
13 It looks like you're referring to a document.

14 MR. GRAHAM: I'm referring to Figure 7, Biological
15 Resources, from the -- I'm not sure of the exact -- it's the
16 Biological Resources map showing Bighorn Sheep management
17 areas in the NECO plan.

18 HEARING OFFICER RENAUD: All right.

19 MR. GALATI: That's specifically out of Exhibit
20 200, the Revised Staff Assessment, the Biological Resources
21 section.

22 HEARING OFFICER RENAUD: Perfect, thank you.

23 MR. GALATI: Is there anything you would like to
24 add as to why you don't believe the project would impact
25 Bighorn Sheep or foraging habitat?

1 MR. GRAHAM: I believe that -- as I said, it was a
2 year of ample rainfall. I think the forage for Bighorn
3 Sheep would have been much better this year than most years.

4 And I believe with the level of biological survey activity
5 on the site combined with the helicopter surveys that were
6 done I believe that evidence of sheep would have been found.

7 Absent that evidence I see no reason why a determination
8 should be made that our project would impact Bighorn Sheep.

9 MR. GALATI: I don't have any further questions.

10 HEARING OFFICER RENAUD: All right, cross-
11 examination.

12 CROSS EXAMINATION

13 BY MS. DeCARLO:

14 Q Mr. Graham, do the McCoy Mountains have the
15 potential to be occupied by Bighorn Sheep?

16 A It would have the potential to be occupied by
17 Bighorn Sheep, yes.

18 Q And in your initial analysis in the AFC did you
19 conclude that the potential for occupancy in the buffer area
20 was high?

21 A I don't recall a definition of a high potential.

22 MS. GUIGLIANO: I believe in the AFC the
23 determination or the statement was that there was a
24 potential. Only a potential, no documented proof. But a
25 potential for seasonal forage on the site.

1 MS. DeCARLO: Can I direct you to page 5.3-28 in
2 Exhibit 1? Maybe I can, if that's going to take too long I
3 can -- it represents a chart entitled Special Status
4 Wildlife Species Relevant to the Proposed Project
5 Potentially Occurring in the BRSA. Survey results and
6 discussion. Potential for occurrence within the disturbance
7 area present for Nelson's Bighorn Sheep. Potential
8 occurrence for occurrence within the buffer, high.

9 MR. GALATI: Is that the AFC Volume I or Volume
10 II?

11 MR. GRAHAM: Volume I.

12 BY MS. DeCARLO:

13 Q Does that refresh your memory about your
14 testimony?

15 A That table was, that table was made at a point
16 very early in our, in our process of investigating
17 biological resources on the site. And it was, it was done
18 strictly on the basis of, of information that was derived
19 from other sources. We did not have the benefit of the work
20 that was done out there this year.

21 And part of our determination at that time was
22 based on the finding in our initial survey activity of some
23 scat, which originally was thought to potentially be Bighorn
24 Sheep scat. But ourselves and staff later determined that
25 it in fact was Mule Deer scat.

1 Q But you originally thought that Bighorn Sheep were
2 present on the site, correct?

3 A We thought that there was the, there was a
4 potential for Bighorn Sheep to be present in the adjacent
5 mountains and to potentially use the site as forage.

6 Q And nothing you have learned since then has
7 changed your mind about that potential, is that correct?

8 A I would say that our -- we would think that the
9 potential -- our determination at this time would be that
10 the potential is much lower based on, as I said, a
11 determination that no such occupation and no such foraging
12 activity was observed after a year if ample rainfall.

13 Q Lower maybe but still the potential?

14 A Yes there is a potential.

15 MS. DeCARLO: Okay, thank you.

16 That concludes my cross.

17 HEARING OFFICER RENAUD: Redirect?

18 MR. GALATI: No redirect.

19 HEARING OFFICER RENAUD: All right. You may step
20 down, thank you.

21 MR. GRAHAM: Thank you.

22 HEARING OFFICER RENAUD: I'm sorry, I should ask,
23 questions from the Committee?

24 PRESIDING MEMBER DOUGLAS: No.

25 ASSOCIATE MEMBER WEISENMILLER: No.

1 HEARING OFFICER RENAUD: Okay, thank you.

2 All right. Is that the extent of the biological
3 testimony or is there more?

4 MR. GALATI: That's it.

5 HEARING OFFICER RENAUD: That's it. All right,
6 good. And what would you like to do next?

7 MS. DeCARLO: Staff would like to call its panel
8 of experts.

9 HEARING OFFICER RENAUD: Go ahead, please.

10 MS. DeCARLO: Okay, great. I have several,
11 several on the phone and several here as well. Susan
12 Sanders, Amy Golden, Sara Keeler. Magdalena Rodriguez from
13 Fish and Game and Mark Masser from BLM are on the phone.
14 And they all need to be sworn in.

15 HEARING OFFICER RENAUD: Those present come on up
16 to the table.
17 Whereupon,

18 SUSAN SANDERS

19 AMY GOLDEN

20 SARA KEELER

21 MAGDALENA RODRIGUEZ

22 MARK MASSER

23 Were duly sworn.

24 MS. DeCARLO: And Amy and Sara will just be
25 available in case we need to call on them.

1 HEARING OFFICER RENAUD: All right, good.

2 MS. KLEBANER: And I should also note that Tannika
3 Engelhard from US Fish and Wildlife Service is also on the
4 phone. She is available to answer questions from the
5 Committee and to comment. However, due to US Fish and
6 Wildlife Service regulations she cannot be subject to cross
7 examination.

8 HEARING OFFICER RENAUD: All right, thank you.
9 Will you be asking her any questions?

10 MS. DeCARLO: I will just be asking her to
11 comment. If she has any comments on staff's analysis.

12 HEARING OFFICER RENAUD: All right. Fine, thank
13 you. Good.

14 MS. DeCARLO: Okay.

15 DIRECT EXAMINATION

16 BY MS. De CARLO:

17 Q Dr. Sanders, did you help prepare the testimony
18 entitled Biological Resources in the Revised Staff
19 Assessment, Exhibit 200?

20 A Yes.

21 Q Was a statement of your qualifications attached to
22 this testimony?

23 A It was.

24 Q Did you prepare the supplemental testimony
25 entitled Biological Resources in the Supplemental Staff

1 Assessment, Exhibit 202?

2 A I did.

3 Q And do the opinions contained in the testimony you
4 are sponsoring represent your best professional judgment?

5 A They do.

6 DIRECT EXAMINATION

7 BY MS. De CARLO:

8 Q Mr. Masser, did you help assist in the preparation
9 of Biological Resources in the Revised Staff Assessment,
10 Exhibit 200?

11 A I did.

12 Q And was a statement of your qualifications
13 included in the Supplemental Staff Assessment, Exhibit 202?

14 A Yes they were.

15 Q And do the opinions contained in this testimony
16 you are sponsoring represent your best professional
17 judgment?

18 A Yes.

19 DIRECT EXAMINATION

20 BY MS. De CARLO:

21 Q Ms. Rodriguez, did you help prepare the testimony
22 entitled Biological Resources in the Revised Staff
23 Assessment, Exhibit 200?

24 A I did.

25 Q And did you also help prepare the supplemental

1 testimony entitled Biological Resources in the Supplemental
2 Staff Assessment, Exhibit 202?

3 A I did.

4 Q Was a statement of your qualifications included in
5 the Supplemental Staff Assessment?

6 A Yes.

7 Q And do the opinions contained in the testimony you
8 are sponsoring represent your best professional judgment?

9 A Yes.

10 RESUMED DIRECT EXAMINATION

11 BY MS. De CARLO:

12 Q Dr. Sanders, can you please discuss your analysis
13 of impacts to Bighorn Sheep and the mitigation you proposed
14 to mitigate those impacts.

15 A Certainly. Bighorn Sheep are a BLM-sensitive
16 species and a California fully protected species. They
17 occur in steep, rocky terrain in desert mountains. An
18 important part of their life history is in the spring when
19 there is forage in the washes, when the annuals bloom in the
20 washes and are available, they come down out of the
21 mountains and forage on those annuals. And it's a very
22 important part of their life cycle.

23 Even though it's not a long period it's an
24 important period. The vegetation in those washes has high
25 nutrient availability, it has water. It also happens to

1 occur at a time that's crucial for the life history of the
2 sheep. Often ewes that are gestating or that have recently
3 given birth rely on those as important nutrient sources.

4 So in BLM's management of Bighorn Sheep they not
5 only like to protect the desert mountains in which they all
6 live but also the spring foraging habitat that occurs on the
7 alluvium or the bajada that's at the base of the mountains.

8 So in our analysis of impacts of the project to
9 Bighorn we -- you should note that BLM manages Bighorn Sheep
10 with WHMAs, Wildlife Habitat Management Area. The project
11 itself is not in a WHMA. But the buffer area, the one mile
12 area around it is, because that's close to the McCoy
13 Mountains there.

14 So it was our conclusion, based on our analysis of
15 what the project would impact and make unavailable to
16 Bighorn Sheep, is that it would impact a pretty wide swath
17 of desert dry wash woodland and other important foraging
18 habitat for Bighorns.

19 There is no current evidence of occupancy in the
20 McCoy Mountains, the nearest mountains to the project site,
21 but no systematic surveys have been done for this species.
22 Aerial surveys for eagles is not considered a systematic
23 survey. So the fact that they were not detected during
24 those aerial surveys for Golden Eagles does not indicate the
25 absence of Bighorn Sheep. They are hard to find. They're

1 secretive and sparse and not very abundant.

2 So to mitigate for the loss of foraging habitat --
3 and I should also add. And Mark and Magdalena, you know a
4 lot about recent records. While there is no evidence of
5 occupancy right now in the McCoys, nearby in the Little
6 Marias south of the Chuckwallas, the Palen, the Granite,
7 there are evidence of current, not just roaming male Bighorn
8 Sheep but lambs, which means that there's actually occupied
9 habitat in the Little Marias nearby.

10 And these animals move widely. Fish and Game and
11 BLM would like to reserve the McCoy Mountains as something
12 that could be either reoccupied by natural means, which
13 happens, or a deliberate introduction happens to expand
14 their range.

15 Bighorn Sheep have declined a lot in the past 140
16 years. The Southern Mojave metapopulation, which is the one
17 that the project area is in, roads have fragmented it.
18 Development has really split up the population, it is much
19 sparser than it used to be. So both BLM and Fish and Game
20 are very concerned about any impacts to this species.

21 So our mitigation, consulting with experts and
22 with Mark and Magdalena. The mitigation that we devised was
23 to supply a new water source, either in the McCoy Mountains
24 or other mountain ranges.

25 Now I have to explain that water source is not,

1 it's not like putting a bowl of water out for a dog. A
2 water source for Bighorn Sheep is a management tool and you
3 direct and manage for the population by putting a permanent
4 water source. Because what that does is expand their
5 foraging opportunities. Suppose it's good foraging habitat,
6 good escape cover in mountains but no perennial water
7 source. Well they won't use it even though all the other
8 limiting factors are there. If you add a water source
9 you've enhanced, you've made that available where it wasn't
10 available before. So it's a widely used tool.

11 And I'm going to refer you to Exhibit 200, the
12 figure that Mr. Graham was referring to earlier. It's
13 Figure 7, I don't know if you have access to it. If you
14 have the whole document open it's PDF page 552 if you want
15 to go to that. And for those of you that don't have it in
16 front of you, what you see on this -- this is a map from the
17 NECO plan, the Northern Eastern Colorado Desert Management
18 Plan. Is that right, Mark? That's what the NECO is.
19 That's the plan that guides all the development in that part
20 of BLM land.

21 HEARING OFFICER RENAUD: That's Exhibit 200?

22 DR. SANDERS: This is Exhibit 200. And when I
23 found it on the PDF it was 552, Figure 7, Bighorn Sheep
24 WHMAs, W-H-M-A-s.

25 HEARING OFFICER RENAUD: So this is the June 4th

1 RSA?

2 DR. SANDERS: Yes.

3 HEARING OFFICER RENAUD: All right. I have to --

4 DR. SANDERS: Is that working?

5 HEARING OFFICER RENAUD: -- identify them all one
6 way or another. Okay, now PDF page again, I'm sorry.

7 DR. SANDERS: Five-five-two.

8 HEARING OFFICER RENAUD: All right, 552. Voilà,
9 got it.

10 DR. SANDERS: Is that coming up? Okay. You will
11 see all those blue dots. Those are natural or artificial
12 water sources. And that's what I'm saying about water
13 sources. They are really important to management of the
14 species; so much so that they map them all. So our
15 mitigation measure, which had the support of experts that we
16 consulted, was to either enhance an existing water source or
17 create a new one.

18 Now we had some discussions with the applicant.
19 This was objectionable to them. And so in the course of our
20 workshop, I think last night, we added another component to
21 this mitigation to give an option. If the applicant chose
22 to do so they could acquire compensatory habitat which would
23 be within the Southern Mojave metapopulation, which would
24 compensate for something close to 1,000 acres, which we
25 calculated was the lost spring foraging habitat.

1 And if possible they could perhaps dovetail this
2 mitigation with their desert tortoise obligations. It's not
3 impossible to do that. They are not exactly coincident. So
4 there was an option for the applicant to do either of those,
5 either create a new water source or acquire compensatory
6 mitigation habitat. And that's the BIO-21 that we have been
7 discussing.

8 Mark and Magdalena, please, I probably have
9 forgotten some things. Do you want to add anything to what
10 I've said?

11 MR. MASSER: What you said is perfect, I think.
12 When you're done, I guess if we have an opportunity to
13 provide anything else we will.

14 DR. SANDERS: Okay. Do you have any more --
15 Magdalena, I know you supplied us with some information
16 about recent finds of Bighorn Sheep, which I didn't really
17 recount because I couldn't recall the exact details. Do you
18 want to add anything about other findings, recent findings
19 of Bighorn Sheep in the area?

20 MS. RODRIGUEZ: Just that if you look at the NECO
21 plan it shows that the Little Marias and the Big Marias are
22 unoccupied, the same as it shows the McCoys. However,
23 recently last year, I think it was in November and December,
24 I think it was in December, there was a ram that was killed
25 in-between the Big Marias and the Riverside Mountains.

1 They're assuming that it was in the north part of the Big
2 Marias. So that documents an animal moving within those
3 ranges that were originally considered unoccupied.

4 And then in addition there was some scat that was
5 collected in the Little Marias. And DNA testing was done on
6 that which documented that there were not only males but
7 females in the Little Marias. So that's the most recent
8 finding, that was in 2009.

9 MR. MASSER: I also want to add that the scat that
10 was found by the applicant wasn't collected and it wasn't
11 tested so we don't know for sure the species for the scat.

12 DR. SANDERS: Just to follow up on Magdalena's
13 remark. Is the area in which there was actually a carcass
14 of a Bighorn Sheep found is marked on this NECO map as
15 unoccupied, the same as the McCoy Mountains, the mountain
16 range near the project site. So these data, the NECO data
17 are old and don't reflect the most current information or
18 even, you know, it's not definitive. Just because it's
19 marked as unoccupied doesn't mean that it always is going to
20 be unoccupied.

21 MR. MASSER: And I want to emphasize that even the
22 unoccupied ranges, the McCoys and the Big and Little Marias,
23 the NECO plan still considers those areas to be very
24 important. That's why they are designated as Bighorn Sheep
25 wildlife habitat management areas. We don't want to

1 preclude future occupancy of those ranges.

2 HEARING OFFICER RENAUD: All right. That
3 concludes your direct? Does that conclude your direct
4 testimony? All right, cross examination.

5 CROSS EXAMINATION OF MS. RODRIGUEZ

6 BY MR. GALATI:

7 Q Does any of the panel, has anybody have knowledge
8 of an observation of Bighorn Sheep in the McCoy Mountains?

9 A I don't have personal knowledge. However -- this
10 is Magdalena, sorry.

11 However, the expert that I consulted within CDFG
12 had stated that a warden -- about 10 to 15 years ago a
13 warden that was stationed in Blythe saw Bighorn Sheep rams
14 at the base of the McCoy near I-10. It's not written in
15 anywhere so, I mean, I can't substantiate that but that's
16 based on personal conversation.

17 Q Right. And that's a conversation that the person
18 that I believe lieutenant --

19 A I'm sorry?

20 Q That's Lieutenant Richard Colby, who is now
21 deceased, told Mr. Mulcahy, is that correct?

22 A Correct.

23 Q Okay. I just would note for the record that
24 that's a couple layers of hearsay.

25 A Correct.

1 Q Is there any other evidence other than the
2 evidence that they are in the Little Marias and the Big
3 Marias and the scat on the site that wasn't tested that
4 would lead you to conclude that the site -- excuse me, that
5 the McCoy Mountains could be occupied?

6 A I'm sorry. So are you saying is there any other
7 evidence than what I just told you? That was the question?

8 Q Yes.

9 A No.

10 Q On page, on page C.2-38 of the staff assessment.
11 That's Exhibit 200, the Revised Staff Assessment. Three
12 paragraphs down, the very last sentence says:

13 "Based on information provided by the
14 Applicant (AECOM 2010a, Data Response BIO-53)
15 and consultation with experts (Rodriguez,
16 personal communication), staff believes it is
17 more likely that the sign found during spring
18 2009 surveys was burro deer."

19 Is that still accurate?

20 A Well, based on conversation, yeah, we had no proof
21 that it was otherwise. However, the scat wasn't tested so
22 we don't know for sure.

23 Q So isn't the mitigation being proposed to try to
24 mitigate what might be a future impact should the McCoy
25 Mountains be re -- excuse me, Bighorn Sheep be reintroduced

1 to the McCoy Mountains?

2 A Is that directed to me? I'm sorry.

3 MR. GALATI: Actually to any of you, I apologize.
4 To anybody on the panel.

5 MR. MASSER: I don't think we have evidence that
6 the McCoys are not occupied. We haven't done surveys during
7 the proper time of the year.

8 DR. SANDERS: And to add to that. I think it is
9 for direct, current and future impacts.

10 CROSS EXAMINATION OF DR. SANDERS

11 BY MR. GALATI:

12 Q And so in order to determine that there is a
13 direct, current impact you have to assume that the McCoy
14 Mountains are occupied by Bighorn Sheep, correct?

15 A I think that is the assumption we're making is
16 that they could be occupied right now and they could be
17 occupied in the future.

18 Q And the evidence of that is what has been
19 discussed here today.

20 A We don't have systematic confirmed surveys that
21 would allow us to conclude that there are no bighorns in the
22 McCoy mountains.

23 MR. GALATI: May I have one moment, please.

24 How far away is our project site from the Big
25 Maria Mountains?

1 DR. SANDERS: I'm not sure. Mark or Magdalena,
2 can you answer that?

3 MR. MASSER: I don't know exactly but the western
4 half is well within a mile of the mountains, of the McCoys.

5 CROSS EXAMINATION OF MR. MASSER

6 BY MR. GALATI:

7 Q That's of the McCoys though, correct?

8 A Yes. Is that --

9 Q I apologize, the question is directed to the Big
10 Maria Mountains. How far away is the project from the Big
11 Maria Mountains?

12 A I don't know exactly but it's probably 12 or 15
13 miles to the east. The Big Marias are -- yeah.

14 Q And how about the Little Marias Mountains?

15 A Probably an equal distance to the north.

16 Q Do you know how far the Genesis Project site is
17 from the Palen Mountains?

18 A I don't know exactly but I think the tip of the
19 Genesis Project is four or five miles from the base of the
20 Palen Mountains.

21 MR. GALATI: No further questions.

22 HEARING OFFICER RENAUD: Any redirect?

23 MS. DeCARLO: No redirect. Though I would like to
24 ask the US Fish and Wildlife Service, Ms. Engelhard, if she
25 has any comments on the staff's analysis.

1 HEARING OFFICER RENAUD: Please, we'd like to hear
2 that.

3 MS. ENGELHARD: I don't have any --

4 MR. GALATI: Just a minute. If I could just
5 provide an objection because I can't cross-examine this
6 witness.

7 HEARING OFFICER RENAUD: Yes.

8 MR. GALATI: And this is not a US Fish and
9 Wildlife Service jurisdictional animal. I'm not sure that
10 this is relevant, especially since I can't ask her any
11 questions.

12 HEARING OFFICER RENAUD: Well.

13 MR. GALATI: I guess if you accept it as comment
14 and not testimony.

15 HEARING OFFICER RENAUD: I think we'll accept --

16 MS. DeCARLO: She has not been sworn so we
17 wouldn't indicate that this was testimony.

18 HEARING OFFICER RENAUD: I think it would be
19 viewed as comment by someone knowledgeable in the field.

20 MS. DeCARLO: By a US Fish and Wildlife Service
21 representative.

22 HEARING OFFICER RENAUD: Who is a biologist, I
23 think, right?

24 MS. DeCARLO: Yes, yes.

25 HEARING OFFICER RENAUD: I think we'd like to hear

1 that. We'll give it the weight it's due. Go ahead.

2 MS. ENGELHARD: Okay. This is Tannika Engelhard,
3 Fish and Wildlife Service. And I actually don't have any
4 additional comments to add to what CEC, BLM and CDFG staff
5 have already stated.

6 MS. DeCARLO: Thanks.

7 HEARING OFFICER RENAUD: All right, thank you.

8 Questions by the Committee? Anybody?

9 I do have one for Dr. Sanders or whoever from the
10 staff. I have been following along Figure 7, PDF page 552
11 of Exhibit 200. And at the bottom there's a, I guess we
12 call it a legend, describing the number of acres affected.
13 And when it comes to affected by the Blythe Solar Power
14 Project it says zero acres and I'm curious to understand
15 exactly what that means. By "affected" I think is what I'm,
16 the word I'm puzzled about.

17 HEARING OFFICER RENAUD: The witness who is most
18 qualified to answer this wasn't sworn because it was the
19 botanist Carolyn Chainey-Davis who did the cumulative, but I
20 think I can answer.

21 The data layers that were used for that analysis
22 were the WHMAs that were designated as Bighorn Sheep
23 wildlife habitat management areas. And as I said, the
24 project area does not overlap with the WHMA, the buffer
25 does, it's very near. And that was the reason. Since that

1 was the basis for the analysis, just the designated NECO
2 WHMAs, the project did not show any impact. But this NECO
3 layer doesn't include the spring foraging habitat that we
4 were discussing.

5 HEARING OFFICER RENAUD: You say it does not
6 include?

7 DR. SANDERS: Does not include.

8 HEARING OFFICER RENAUD: So are you saying that
9 perhaps you wouldn't describe it as a direct impact at the
10 site but some sort of an indirect impact that spreads from
11 the site?

12 DR. SANDERS: Let me clarify. This calculation in
13 this little box down here was strictly referring to the NECO
14 mapping that was done. It wasn't a site-specific assessment
15 of what an impact to a certain area would have to Bighorn
16 Sheep habitat. It's simply -- and Mark, please jump in
17 because I'm here talking about BLM NECO layers and you know
18 more than anybody. But the fact that there was no impact
19 detected in this analysis just indicates the NECO layers
20 didn't show up. The WHMA that was offsite, a mile or so
21 offsite, was not directly impacted by the project footprint.

22 And Mark, if you want to add anything to that you're
23 welcome to do so.

24 MR. MASSER: I guess the only thing I'd want to
25 add is that the WHMA boundaries do not include the spring

1 foraging habitat for some unknown reason. And that's --

2 HEARING OFFICER RENAUD: All right, good.

3 Another question then. Your recommendation is,
4 provide a new water source or compensatory habitat. Will we
5 get any more specifics about those recommendations?

6 DR. SANDERS: I think the applicant has prepared
7 Exhibit 66. We do have a condition right now in there for
8 the spring foraging and then last night we added the
9 alternative that was for acquisition. And that will be
10 submitted in the next few hours, I believe. But if you want
11 to see the condition regarding the spring foraging water
12 source, that's on BIO-21 and I can find the page if you'd
13 like to look at that.

14 MR. GALATI: I currently have that marked as -- to
15 show you how cooperative that we have all been it's an
16 applicant exhibit for a condition that they do not want to
17 comply with. It's Exhibit 66. Because we have been working
18 on the language as well and we actually have a modification
19 of that. So what I would give you now actually needs to
20 have a number revision in it. But we certainly can, after
21 public comment, enter that along with the rest of the
22 conditions into the record. And this is one that we're
23 disputing the need for.

24 HEARING OFFICER RENAUD: All right, very good.
25 That's it then? Anything further?

1 MR. GALATI: No, nothing further from the
2 applicant.

3 HEARING OFFICER RENAUD: From the staff?

4 MS. DeCARLO: Nothing from staff.

5 HEARING OFFICER RENAUD: All right, thank you.

6 My notes show you were also talking about a raven
7 management plan and tortoise mitigation lands. Do we have
8 testimony about hat as well?

9 MR. GALATI: We have reached an accord.

10 HEARING OFFICER RENAUD: All right, good.

11 MR. GALATI: And we'll enter that into the record
12 after public comment.

13 HEARING OFFICER RENAUD: All right, very good,
14 thank you. So what topic would you like to proceed with?

15 MR. GALATI: We'd like to give you guys a break
16 until 5:30.

17 HEARING OFFICER RENAUD: All right.

18 MR. GALATI: And continue with our workshop on
19 Traffic and Transportation.

20 HEARING OFFICER RENAUD: All right. So you'll
21 remain in here?

22 MR. GALATI: Oh, I'm sorry, Lisa.

23 MS. DeCARLO: I can't remember if we had resolved
24 -- did we want to enter in Soil and Water now so that our
25 Soil and Water folks could go home or did we need more time

1 on that?

2 MR. GALATI: I apologize. I guess we can enter
3 Soil and Water now.

4 MS. DeCARLO: Okay. I'd like to call -- or did
5 you want to call your -- were you going to do it by
6 declaration? I have my witnesses here.

7 MR. GALATI: Yeah. I'm just going to do, if
8 there's no objection, an offer of proof through counsel that
9 we agree.

10 MS. DeCARLO: Do we have an exhibit number for --
11 do we have a packet of the changes?

12 MR. GALATI: Do you guys, do you guys --

13 MS. DeCARLO: Okay. So this will be marked
14 Exhibit 210. And my witnesses are Michael Donovan and John
15 Thornton and they need to be sworn.

16 Whereupon,

17 MICHAEL DONOVAN

18 JOHN THORNTON

19 Were duly sworn.

20 THE REPORTER: Please state and spell your names
21 for the record.

22 MR. THORNTON: It's John Thornton, T-H-O-R-N-T-O-
23 N.

24 MR. DONOVAN: Michael Donovan, D-O-N-O, V as in
25 Victor, A-N.

1 THE REPORTER: Thank you.

2 DIRECT EXAMINATION

3 BY MS. DeCARLO:

4 Q Mr. Donovan, did you prepare the testimony titled
5 Soil and Water Resources in the Revised Staff Assessment,
6 Exhibit 200?

7 A Yes I did.

8 Q Was a statement of your qualifications attached to
9 this testimony?

10 A Yes.

11 Q Did you prepare the supplemental testimony titled
12 Soil and Water Resources in the Supplemental Staff
13 Assessment, Exhibit 202?

14 A Yes I did.

15 Q Do the opinions contained in this testimony you
16 are sponsoring represent your best professional judgment?

17 A Yes they do.

18 DIRECT EXAMINATION

19 BY MS. DeCARLO:

20 Q Mr. Thornton, did you prepare the testimony
21 entitled Soil and Water Resources in the Revised Staff
22 Assessment, Exhibit 200?

23 A I did.

24 Q Was a statement of your qualifications attached to
25 this testimony?

1 A Yes it was.

2 Q And the opinions contained in this testimony you
3 are sponsoring represent your best professional judgment?

4 A They do.

5 Q Can you please -- do you have Exhibit 210 before
6 you, the Blythe Solar Power Project Soil and Water Resources
7 Conditions of Certification?

8 A Yes I do, I've got it.

9 Q Do these conditions of certification represent
10 changes to the previous conditions made in conjunction with
11 discussions with the applicant?

12 A Yes, this was during our workshop today.

13 Q And do these changes -- can you please describe
14 how these conditions of certification affect your
15 conclusions regarding soil and water resources and the
16 potential for the Blythe Solar Power Project to impact those
17 resources.

18 A Yes. These conditions address all of the
19 potential significant impacts that the Blythe Solar Project
20 would occur to soil and water resources. These changes were
21 associated mostly with a disagreement between the applicant
22 and the Energy Commission with regard to impacts to the
23 Colorado River. We have come to an agreement with respect
24 to addressing those impacts to -- with respect to the
25 project pumping and surface water sources. And so we feel

1 that the soil and water conditions of certification address
2 all significant impacts.

3 Q And does this conclude your testimony?

4 A This concludes my testimony.

5 MS. DeCARLO: The witness is available.

6 HEARING OFFICER RENAUD: Thank you. Cross
7 examination.

8 MR. GALATI: May I have just a moment to talk to
9 Ms. DeCarlo?

10 MS. DeCARLO: Oh-oh.

11 HEARING OFFICER RENAUD: Of course. We'll go off
12 the record then while they confer.

13 (Off the record for a brief conference.)

14 RESUMED DIRECT EXAMINATION

15 BY MS. DeCARLO:

16 Q Mr. Donovan, can you please discuss changes, two
17 changes that you agree with to Exhibit 210 that Mr. Galati
18 pointed out.

19 A Yes. With respect to Condition 16, which is under
20 the heading of estimation of Colorado River impacts. That
21 should read, estimation of surface water impacts.

22 And the same thing in respect to Soil & Water 16,
23 Item 1, where it says "The project owner shall conduct a
24 detailed analysis of contribution of Colorado River water."
25 It should read, "contribution of surface water to the

1 PBMGB."

2 Q And do these changes affect your conclusion that
3 there will be no significant unmitigated impacts?

4 A No, there will be no significant impact from these
5 changes.

6 MS. DeCARLO: Okay, the witness is available for
7 cross.

8 CROSS EXAMINATION

9 BY MR. GALATI:

10 Q I just have one question, Mr. Donovan. Do you
11 believe the Blythe Solar Power Project needs an entitlement
12 for Colorado River water to be able to pump groundwater on
13 the mesa?

14 A No.

15 MR. GALATI: No further questions.

16 HEARING OFFICER RENAUD: Cross (sic)?

17 MS. DeCARLO: None.

18 HEARING OFFICER RENAUD: All right, thank you.

19 Does that conclude the testimony on Soil and Water then?

20 MR. GALATI: Yes that does, for me.

21 HEARING OFFICER RENAUD: All right. Let's see.

22 You had mentioned an offer of proof, Mr. Galati.
23 You had mentioned an offer of proof at some point. Is that
24 no longer needed?

25 MR. GALATI: I think when I move in the rest of my

1 testimony I probably am going to say, you know, as modified
2 by the later exhibits.

3 HEARING OFFICER RENAUD: All right, okay, very
4 good.

5 MR. GALATI: I didn't think I need, unless the
6 Committee does, think I needed a live witness to be able to
7 do that.

8 HEARING OFFICER RENAUD: No, no.

9 MR. GALATI: Okay, thanks.

10 HEARING OFFICER RENAUD: All right. So does that
11 mean you want to go back to your workshop at this point?

12 MS. DeCARLO: If we could, on aviation. Yeah, the
13 Traffic and Transportation aviation assessment.

14 HEARING OFFICER RENAUD: All right.

15 MR. GALATI: Yes, please.

16 HEARING OFFICER RENAUD: Very good. So those of
17 you on the phone, the line will remain open. The workshop
18 is public, if you wish to listen you may. Those of you
19 here, you may also stay if you wish. We'll come back at
20 5:30 for public comment. Thank you. The evidentiary
21 hearing is adjourned until 5:30.

22 (Whereupon, the Evidentiary Hearing was
23 adjourned at 3:52 p.m. to conduct a
24 workshop to discuss outstanding issues.)

25 --oOo--

HEARING OFFICER RENAUD: We will reconvene the evidentiary hearing in the Blythe Solar Power Project. Welcome back.

Is there anyone on the telephone who wishes to make a public comment about the Blythe project?

Is there anyone on the telephone at all? If you could just let us know its working.

HEARING OFFICER RENAUD: Good, thank you, okay.

All right, I'll call Daniel Curtin.

I have yet to circulate this letter from our general president -- I'm sorry.

EHLERT BUSINESS GROUP
(916) 851-5976

1 and who you represent, please.

2 MR. CURTIN: I will. My name is Daniel Curtin.
3 I'm the director of the California Conference of Carpenters.

4 I wanted to come to the hearing to let you know
5 that we fully support this project. And in fact we are very
6 enthusiastic about all of the renewable projects that are
7 before you.

8 We respect and are beginning to understand the
9 depth of detail that you must go through to get these
10 projects sited but we encourage you to do that as quickly as
11 possible. And I'm sure we are not the only ones encouraging
12 you to do that.

13 I had sent a letter or got a letter sent by our
14 general president to Commissioner Weisenmiller and
15 Commissioner Boyd because we attended Tuesday's hearing. I
16 would like to get a copy to you and Commissioner Douglas as
17 well, sort of outlining the carpenters' general position on
18 this. Which is, as I said, in support of these projects.

19 But we also at that hearing made it clear that we
20 are very concerned about the tactics of some of the
21 organizations, or a specific organization, which I think
22 will become clear in a minute, regarding their concerns
23 about ecology, biology, environmental issues. That would be
24 CURE specifically. And I think today's, what happened today
25 would highlight my comments from the other day.

1 So basically our general president asked the
2 Commissioners and the Commission in general to take very
3 skeptically the concerns of an organization that is
4 basically a union organization with economic interests when
5 it comes to biological, ecological, environmental issues
6 before this Commission. Now we know they have that right.
7 Everybody actually has that right, we respect that. But the
8 motivations are also quite important.

9 And I guess today they actually withdrew their
10 objections from this project because they proudly announced
11 that they have an agreement. And frankly that only
12 highlights my concerns. That their objections using this
13 process, which is a very, very important process, are
14 fundamentally untruthful in the sense that they are -- and I
15 wish they were here because it is always more fun to have
16 this conversation when the parties involved are here. When
17 they are fundamentally only concerned about using this
18 process to extract, I'll be polite, extort, not so polite, a
19 labor agreement for the construction of these facilities.

20 Now we are not opposed to labor agreements, we're
21 a union. But what I said on Tuesday and I want to repeat.
22 These issues are so profoundly important. We are not
23 building gas stations, we are not building strip malls. We
24 are building really the most important industrial
25 developments for the future of the planet.

1 This is the, I think, equivalent to the industrial
2 revolution. We are moving from fossil-based fuels which
3 have gotten us into a situation that is beginning to look
4 more and more untenable to everybody except maybe a few
5 holdouts. And this is the methodology we are going to use
6 to get the planet out of this mess. And we have very, very
7 aggressive policies in California leading in that direction
8 and we happy to be a part of those. We were a part of that
9 legislation. We've worked with the administration. We
10 think this is ground zero for building a clean, renewable
11 energy future and it's absolutely critical.

12 So it only makes it that much more unpalatable
13 that they would use these tactics at this moment in the
14 history of this planet, so to speak. The fact that they
15 have withdrawn and have no longer any concerns that they had
16 just yesterday on biological, ecological, environmental
17 issues really only highlights the comments I made two days,
18 just two days before. If they were really concerned about
19 those issues they'd be here at the table working them out.
20 They magically disappeared because they got what they wanted
21 economically.

22 Now you could say yes or no and I'm not really
23 here to debate it. But it seems obvious to us, and not just
24 us, obviously, or not so obviously, many, many others, that
25 that's the tactic. And, you know, people have used tactics

1 for a long period of time. But in this particular case, the
2 considerations of where we are environmentally, we believe
3 this is fundamentally unethical. And we encourage you to
4 take a hard look at what they're doing.

5 Just to step back one second. We believe that
6 this is an evolving technology and we need innovation in
7 this technology. When you shoehorn an agreement that does
8 not really work for the people who are building these
9 systems then you are going to hold up the technology that is
10 vital to have this approved. To get these systems to
11 finally be economically feasible. Having said that, we
12 believe CURE has used these for very, very narrow purposes
13 and object to it.

14 Now I want to add one more thing which will be
15 more, even more -- if this isn't controversial, will be more
16 controversial. Not only have they used this process, I
17 think, and abused this process for non-environmental issues,
18 they have actually as part of the agreements they settle on,
19 they are rewarded by money from these agreements to continue
20 this process so that the next applicant that comes in has to
21 face a battery of concerns that are clearly not motivated by
22 what drives this Commission.

23 So we would like to ask this Commission to look
24 into this. Literally look into this and say, we'd like to
25 see what your agreements actually amount to. And are you

1 using these agreements to fund continued use or abuse of
2 this process.

3 If necessary or if better I'll send a letter to
4 that effect, asking the Commission to tell their lawyers to
5 take a look at the agreements that the companies -- And I'm
6 not trying to besmirch the companies in any way, shape or
7 form. They're doing business and they're trying to get this
8 done. But I would like to ask the Commission to ask their
9 attorneys to see if this works.

10 Now where is my friend Billy Owens back there?
11 I'm going to talk about Shakespeare for a second here.
12 There's something rotten in Denmark. This isn't right. And
13 I just did that for him because he doesn't believe I'd wear
14 a suit and tie even.

15 So this is really wrong. We're going to ask the
16 Commission, and I'm asking you verbally now, we need to put
17 a stop to this. Because this is just the beginning of a
18 decade and a half of issues that you're going to be dealing
19 with. Hopefully by then it will be worked out.

20 We believe it's wrong. We'd like to stop it.
21 We'd like to see you people -- you people. We'd like to see
22 the Commission take a hard look at this and discourage this
23 kind of behavior. It couldn't have been more blatant. Two
24 days ago I'm here to say, be skeptical of their motivations.
25 Two days later all of their concerns are withdrawn because

1 we have our economic agreement. I don't believe their
2 agreement had much to do with biology and environmentalism,
3 I'm not sure.

4 And I know you have to walk a very delicate line
5 and you have strong legislative and statutory guidelines.
6 We encourage you to continue being due diligent like you
7 are. It's amazing to watch this process really. It's very,
8 very well done. But we do believe it's abused in this case.

9 So I'd be happy to -- if there's any questions.
10 But I just needed to make that statement, to be quite
11 honest.

12 ASSOCIATE MEMBER WEISENMILLER: Well, I certainly
13 listened to your short comments earlier in the week and the
14 participation of your members and appreciate that. And
15 again, we have a very public process.

16 MR. CURTIN: Right.

17 ASSOCIATE MEMBER WEISENMILLER: We certainly
18 encourage participation and a wide range of views. I think
19 certainly our Public Adviser can help you get your comments
20 docketed in this case and the other cases. Again, to make
21 sure that your message is getting out to all the
22 Commissioners. And again, certainly if you have specific
23 questions, you know. And again, please docket those for us.

24 I know a few years ago -- I was not here but the
25 Commission did respond to I think a legislator's question

1 about CURE's participation in his cases. So that might be
2 something you want to look at.

3 MR. CURTIN: Okay.

4 ASSOCIATE MEMBER WEISENMILLER: But again, I think
5 -- certainly I want to encourage you to participate in our
6 cases. I certainly find it very, very encouraging that you
7 are looking at the job potential of these projects and
8 looking at ways to innovate there that can reduce cost and
9 enhance the technology.

10 MR. CURTIN: As I said, we believe the industry
11 should decide what the work force needs are and then we'll
12 help fit those needs. Not say, here is what your work force
13 needs are, take them or leave them.

14 ASSOCIATE MEMBER WEISENMILLER: Okay.

15 MR. CURTIN: If I could get some help on that
16 particular situation where they -- maybe the time period.

17 MS. DeCARLO: Tracking down the letter. Yes, I
18 know the letter that you're referring to. It's probably
19 about six or seven years ago. It was addressed to, I
20 believe -- it was from the siting division, Robert
21 Therkelsen.

22 ASSOCIATE MEMBER WEISENMILLER: Right.

23 MR. CURTIN: Okay.

24 ASSOCIATE MEMBER WEISENMILLER: But again -- and
25 certainly the Public Adviser is here to help you.

1 MR. CURTIN: Appreciate that.

2 ASSOCIATE MEMBER WEISENMILLER: And I think also
3 to encourage you to look generally at stuff. I know it's
4 been a long time ago but at one point at my prior firm, one
5 of the things we did -- we did an assignment with TCW. And
6 basically they were working with the boilermakers who wanted
7 to invest their pension money in renewable projects,
8 particularly projects that had boilermaker content. So
9 again, really deep in the relationship between the
10 alternative energy technology and the unions. So again,
11 there's a lot of interesting things you can do.

12 MR. CURTIN: Well we're very supportive of
13 continuing along this path, you know. We just want it to be
14 done so that the industry can actually innovate and make
15 this work, because we all need it.

16 ASSOCIATE MEMBER WEISENMILLER: That's great,
17 thank you.

18 MR. CURTIN: Thank you for your time.

19 HEARING OFFICER RENAUD: I should add for the
20 record, though, that you may know more about the agreement
21 than the Commission or the Committee does.

22 MR. CURTIN: I don't.

23 HEARING OFFICER RENAUD: What we heard today was a
24 statement from CURE's attorney and we were given a written
25 statement indicating that their environmental concerns had

1 been satisfied and it was fairly specific about why.

2 MR. CURTIN: Um-hmm.

3 HEARING OFFICER RENAUD: And there was no mention
4 of any other kind of, as you put it, economic consideration.

5 MR. CURTIN: Understood.

6 HEARING OFFICER RENAUD: Now that doesn't mean it
7 doesn't exist. Obviously you're basing your comments on
8 knowledge or an assumption that it does exist.

9 MR. CURTIN: Yes.

10 HEARING OFFICER RENAUD: As far as we're concerned
11 we don't know about that.

12 MR. CURTIN: So since it is public testimony I may
13 not be held to such rigorous standards as the attorneys
14 around the table here, hopefully. But there's a common
15 understanding that the parties that sign these agreements
16 actually contribute to trust funds that we believe fund the
17 intervention. And it's based on 25 cents or so a man hour
18 worked or a person hour worked.

19 We think there's about 16 million work hours
20 coming up in the next 15 projects, which amounts to \$4
21 million, which is a pretty good amount of money to work with
22 in terms of intervening in this Commission. So we find that
23 appalling. If that's the case we'd encourage the Commission
24 to look into it. And we will, we'll make a formal request
25 if that's what is necessary.

1 HEARING OFFICER RENAUD: Thank you.

2 MR. CURTIN: Thank you. Thank you again.

3 HEARING OFFICER RENAUD: Is there anyone else who
4 wishes to make a public comment, present here in the room?

5 Is there anyone on the phone who wishes to make a
6 public comment?

7 No? Hearing none, all right.

8 MR. GALATI: Mr. Renaud?

9 HEARING OFFICER RENAUD: Yes, Mr. Galati.

10 MR. GALATI: I'd like to just point the Committee
11 in the direction of several public comment letters that were
12 filed in behalf of supporters of the project. There's at
13 least 40 documented letters that have been docketed in the
14 record from local residents and business owners.

15 In addition a letter from Supervisor John Benoit,
16 a letter from Larry McLaughlin who is with the College of
17 the Desert, David Lane, the Blythe City Manager, Joey
18 DeConinck, the may for the city of Blythe, Sam Patel, which
19 is a Blythe City Council Member, Jim Shipley, Blythe Chamber
20 COO. Wes Ahlgren, who is with the Coachella Valley Economic
21 Partnership, And Jennifer Lambert, the Palo Verde Unified
22 Parent Teacher Organization. So I wanted to make sure that
23 the Committee was aware of that.

24 We are in Sacramento and not everybody was able to
25 travel and so people that did support the project that you

1 saw at our site visit/informational hearing filed letters of
2 support for you to consider as well.

3 ASSOCIATE MEMBER WEISENMILLER: I was going to
4 say, certainly when we had the site visit it was very clear
5 to the Chair and I that there was a lot of support in the
6 community for the project. Obviously we had hoped to go
7 back. But with the budget realities the state is facing we
8 just could not do that. But again, certainly we heard loud
9 and clear from the community when we were there the broad
10 range of support you had.

11 HEARING OFFICER RENAUD: Yes, and I've noted that
12 those letters have been arriving and are docketed. I was
13 just checking your exhibit list. I don't think any of them
14 are exhibits.

15 MR. GALATI: I didn't identify them as an exhibit
16 because I knew they would be public comment.

17 HEARING OFFICER RENAUD: And we'll treat them as
18 public comment.

19 All right, good. Anything else from either party?

20 MS. DeCARLO: We have a couple of other matters.

21 HEARING OFFICER RENAUD: All right.

22 MS. DeCARLO: We're through with the public
23 comment section?

24 HEARING OFFICER RENAUD: Yes. We'll conclude
25 public comment and we'll go back into the matters remaining

1 in the evidence process.

2 Off the record for a moment, please.

3 (Off the record for a brief discussion.)

4 HEARING OFFICER RENAUD: Let me just ask one more
5 time. Are there any public agencies, elected officials,
6 government officials who wish to comment before we close
7 public comment? All right, just double-checking.

8 MR. GALATI: Mr. Hearing Officer, we have --

9 HEARING OFFICER RENAUD: Okay, back on the record,
10 please.

11 MR. GALATI: Mr. Renaud, we have created quite a
12 bit of paper today on actually final documents. Staff
13 counsel and I have spoken and we think it might be more
14 efficient if we took one more look at them. And since we
15 are coming back tomorrow, we weren't able to resolve all of
16 our airport aviation issues with Traffic and Transportation,
17 we thought it might be better, more efficient and probably
18 lead to a cleaner PMPD with fewer comments, if we did a
19 little bit more proofing of the documents we have been
20 creating today.

21 But I believe that we are, if not completely
22 agreed, we are very, very close on Cultural. We have one
23 more review to do.

24 I believe that other than the issue that you heard
25 on Bighorn Sheep we are completely agreed on Biology.

1 We wanted to let you know that we also are agreed
2 on Worker Safety and we have a condition here that we'd like
3 to mark. Do you want to enter this now?

4 MS. DeCARLO: Sure. Could I just get
5 clarification -- confirmation that it does remedy the
6 typographical error in number two of the condition to read
7 \$850,000?

8 MR. GALATI: Not the version I have but the
9 version on my computer does so we didn't print that one out.
10 I think I'd like to move that one in tomorrow as well.

11 MS. DeCARLO: Okay.

12 MR. GALATI: I made it -- they are both 825. The
13 condition was 825, the verification was 850?

14 MS. DeCARLO: Yes.

15 MR. GALATI: Okay.

16 MS. DeCARLO: No, they're both 850.

17 MR. GALATI: They're both 850. Okay, we'll talk
18 about it tomorrow.

19 We also needed to resolve Visual.

20 MS. DeCARLO: Yeah. I just wanted to confirm or
21 make sure that staff's Visual testimony was entered into the
22 record, I think we left that outstanding. As Scott
23 indicated earlier that he had agreed to withdraw his
24 comments. I just wanted to make sure that staff's testimony
25 was in fact entered by declaration.

1 HEARING OFFICER RENAUD: I think it was but if it
2 wasn't let me ask if there is any objection?

3 MR. GALATI: No objection.

4 HEARING OFFICER RENAUD: Good. Then it will be
5 admitted if it wasn't already.

6 MS. DeCARLO: Thank you.

7 MR. GALATI: So I think at this stage we'd prefer
8 to handle the rest of the exhibits at the first part of
9 tomorrow's hearing and then go to Traffic and
10 Transportation.

11 HEARING OFFICER RENAUD: All right, very good.

12 One question that the Committee is interested in
13 asking pertains to the Bighorn Sheep issue that we heard
14 earlier and there may be people here who would be able to
15 answer it. The question is simply with respect to the
16 proposed BIO-21. What is a, what did you call it,
17 artificial water source? What does that look like, how do
18 you make one, what does it cost and so forth? Do we have --
19 do people have experience with those? Are they effective?
20 Whatever anybody knows about it.

21 MS. DeCARLO: Dr. Sanders has been previously
22 sworn in.

23 DR. SANDERS: The people most qualified to answer,
24 Mark Masser and Magdalena Rodriguez, are not on the phone
25 anymore. But a guzzler is pretty --

1 HEARING OFFICER RENAUD: Did you call it a
2 guzzler?

3 DR. SANDERS: A guzzler, right.

4 HEARING OFFICER RENAUD: All right, okay.

5 DR. SANDERS: It's a source of water that is
6 typically buried. It runs in cost anywhere from something
7 like 10,000 to 50,000 depending on how it's installed. The
8 idea is to get it installed in an area that isn't going to
9 require a road construction or transmission line
10 construction because that increases the impacts.

11 But it should be a permanent water source
12 collecting water from a natural, immediate watershed so you
13 don't have to pipe water in. And the proposal in BIO-21 is
14 to either restore a natural water source, which maybe is
15 impaired because of changes, hydrological changes upstream
16 or for other reasons, or to create a new one. And the cost
17 is quite variable depending on how it's constructed. So
18 that is about the extent of my knowledge on guzzlers.

19 HEARING OFFICER RENAUD: All right. Have any
20 specific plans for the suggested one been developed? The
21 location, type, cost, whatever?

22 DR. SANDERS: That was something that we thought
23 needed an assessment first. And that was what specified in
24 the condition is to identify what the existing water sources
25 are in the appropriate area that would benefit the Southern

1 Mojave metapopulation.

2 HEARING OFFICER RENAUD: All right.

3 DR. SANDERS: See if there's any that could be
4 fixed. That would be the most cost-effective way to do it.
5 And if not, install one.

6 HEARING OFFICER RENAUD: All right. Would there
7 be any value in bringing back the two specialists you
8 mentioned, tomorrow?

9 DR. SANDERS: They would know quite a bit more
10 than I do. I don't know if Bill Graham or Jen are here.
11 Jen?

12 MS. GUIGLIANO: I can add just a little bit. As
13 Susan mentioned, it is highly variable depending on the type
14 of water source you are going to install. It also depends
15 on whether or not you can access the place to put it. And
16 you could end up with a placement -- in order to have it
17 placed in an effective location you could end up with all
18 sorts of other impacts from the actual installation and/or
19 restoration of a water source.

20 So the actual cost is not just the cost of the
21 guzzler itself but the cost of the installation, the
22 maintenance, the monitoring that goes with it to determine
23 whether or not it is being used. And all the other aspects
24 that accompany the installation of a guzzler as well as the
25 potential other effects on other wildlife or use by other

1 wildlife and the implications of that.

2 I've dealt with guzzlers in the past for other
3 types of wildlife, not for the Bighorn Sheep, and they can
4 be buried below the ground. Some of them can literally be
5 concrete or fabricated structures that are set above the
6 ground. Some can be designed to have to be refilled with a
7 water truck because there isn't, you know, routine water in
8 the desert. Some can be designed to use a natural water
9 source or a flow path to collect water. Hence the
10 variability in the cost is very dependant on the location
11 and the design that's selected.

12 HEARING OFFICER RENAUD: Is the idea then that the
13 animals drink from it or that it provides water for
14 vegetation that they can eat?

15 MS. GUIGLIANO: The purpose is drinking. A
16 wildlife drinking water source, essentially.

17 HEARING OFFICER RENAUD: Okay, all right. Okay,
18 good. Applicant, do you have anything to add to the
19 discussion?

20 MR. GALATI: No. I can tell you that we did have
21 some discussions -- and again I'm not testifying but I can
22 give the Committee -- I heard, you know, \$50,000 to, I think
23 we had a number that when we started adding up was well over
24 a couple hundred thousand dollars. Again, they were talking
25 about another cost of assessment. You know, helicopter

1 surveys to find where the best place would be.

2 So there's quite a bit of work to actually, to
3 locate one that is -- if you find one quickly you don't
4 spend as much money finding it. If you don't find one
5 quickly you can spend a lot of money. But one of the big
6 things that I think that Dr. Sanders said was, you don't cut
7 a road in to get here. So we're talking about remote access
8 and a lot of labor.

9 HEARING OFFICER RENAUD: Good.

10 ASSOCIATE MEMBER WEISENMILLER: That's why I
11 assumed that mitigation land became another option.

12 MR. GALATI: I'm sorry?

13 ASSOCIATE MEMBER WEISENMILLER: That's why I
14 assumed that mitigation land became another approach. That
15 presumably it was easier for you to bound.

16 MR. GALATI: Yeah, that was certainly what we were
17 looking for when we proposed that idea as well. We were
18 hoping that the mitigation lands would be defined in such a
19 way that the fact that the applicant has agreed to mitigate
20 one-to-one for desert tortoise that there could be quite a
21 bit in overlap in the mitigation.

22 ASSOCIATE MEMBER WEISENMILLER: Right.

23 MR. GALATI: And we're finding that that may not
24 be the case. So that is our concern. That's why we went
25 back to the original position that we didn't believe we had

1 an impact.

2 ASSOCIATE MEMBER WEISENMILLER: I think from the
3 Committee's perspective -- and again the good news is you
4 guys have done a phenomenal job of narrowing the issues;
5 we're down to maybe a couple. But also we're so close to
6 getting this whole thing tied up that we certainly would
7 encourage the parties to sit down and talk one more time
8 about this issue and say, can we at least all get to the
9 point of seeing this whole thing was dealt with, by
10 settlement.

11 DR. SANDERS: If I could ad one more thing. I
12 know that BLM and Fish and Game stand ready to help advise
13 the applicant as to how they should proceed. And perhaps
14 they could help narrow down the range of costs and give you
15 some idea of less expensive ways to undertake this. Because
16 I know that the water source creation or restoration was
17 their first choice, more so than the acquisition of habitat.
18 So perhaps there is opportunity for -- well, I don't know
19 what the opportunity would be since we are kind of drawing
20 to the end of this process. But I know that they are
21 willing to work with you as much as they can.

22 ASSOCIATE MEMBER WEISENMILLER: Well again, I
23 think from my perspective, you know, just sort of suggesting
24 people try to talk one more time and see if by rolling up
25 your sleeves you can get this whole thing tied up. And

1 again, it's not a huge impact I think in terms of a decision
2 or whatever. But I think it will send a very good message
3 for the project in Sacramento to say the whole thing was
4 settled. It was -- otherwise we have to explain, well there
5 was these two issues, but. This could be the perfect game,
6 right?

7 MR. GALATI: You bet. We'll certainly -- we're
8 sort of out of pitches at the moment though.

9 HEARING OFFICER RENAUD: And those discussions can
10 go on even after the evidentiary hearings. We can deal with
11 these things via errata or other procedures.

12 Just for clarification, my understanding of BIO-21
13 now is that mitigation lands are no longer in there. That's
14 not -- is that one of the --

15 DR. SANDERS: That isn't my understanding but
16 perhaps the applicant can clarify. I thought it was an
17 option, they can do either one.

18 ASSOCIATE MEMBER WEISENMILLER: That's what I'm --

19 HEARING OFFICER RENAUD: Is it? Okay.

20 MR. GALATI: Yes. I think that we --

21 HEARING OFFICER RENAUD: Is that the latest? All
22 right.

23 MR. GALATI: Yes.

24 HEARING OFFICER RENAUD: Okay. It's an either/or.

25 MR. GALATI: Yes.

1 HEARING OFFICER RENAUD: All right, thank you. I
2 think I was looking at an ancient version, maybe three days
3 ago, you know. (Laughter.)

4 MR. GALATI: I can't tell you how many times this
5 particular week I have said, a couple of weeks ago or
6 yesterday.

7 HEARING OFFICER RENAUD: All right. So schedule-
8 wise, what time should we plan on reconvening? We did
9 notice it for 10:00. Will that work?

10 MS. DeCARLO: Actually we were hoping to continue
11 this hearing to tomorrow morning at 9:00 a.m. so staff and
12 the applicant could further discuss aviation issues in a
13 workshop setting, not needing the Hearing Officer or the
14 Commissioners.

15 HEARING OFFICER RENAUD: That's fine.

16 MS. DeCARLO: And then we can proceed at 10:00
17 o'clock, the normally scheduled time, and kind of get a
18 status update, see where we are.

19 HEARING OFFICER RENAUD: All right.

20 MS. DeCARLO: If we've made any progress in
21 aviation or if we need to proceed to litigate that issue.

22 HEARING OFFICER RENAUD: All right. So we'll
23 convene the second session of the evidentiary hearing
24 tomorrow morning at 10:00. You can conduct a workshop
25 before that and at 10:00 we'll at least find out what's

1 going on and what we should do.

2 MR. GALATI: And I promise you then we'll have
3 these exhibits worked out to where they're perfect.

4 MS. DeCARLO: And just to -- we intend -- our
5 biologists aren't going to be available tomorrow morning so
6 we intend to, absent any problems, file by declaration, file
7 the condition changes by declaration.

8 HEARING OFFICER RENAUD: Fine.

9 MS. DeCARLO: If that's okay with the Committee.

10 ASSOCIATE MEMBER WEISENMILLER: Yes.

11 HEARING OFFICER RENAUD: All right. Well,
12 anything else?

13 ASSOCIATE MEMBER WEISENMILLER: That's it.

14 HEARING OFFICER RENAUD: All right, thank you
15 then. We're adjourning this day of evidentiary hearings and
16 we'll see you tomorrow at 10:00

17 (Whereupon, at 6:00 p.m. the Evidentiary
18 Hearing was adjourned, set to reconvene
19 at 10:00 a.m. on July 16, 2010.)

20 --oOo--

21

22

23

24

25

CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Evidentiary Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of July, 2010.

PETER PETTY, CER**D-493

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

RAMONA COTA, CERT**478

July 19, 2010